

parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

**Benjamin I. Berman,**

*Acting Secretary.*

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[File No. 942-3263]

**WLAR Co., et al.; Proposed Consent Agreement With Analysis to Aid Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Falls Church, Virginia weight-loss company from making false or unsubstantiated representations for their weight-loss booklets or other weight-loss products or program, and would require respondent and its owner to disclose in future ads making weight-related claims for these or similar booklets that the products consist solely of booklets or pamphlets.

**DATES:** Comments must be received on or before August 21, 1995.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Richard L. Cleland, FTC/S-4002, Washington, DC 20580. (202) 326-3088.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is

invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

**Agreement Containing Consent Order to Cease and Desist**

In the matter of WLAR Co., a corporation, and Michael K. Craig, individually and as an officer of said corporation. File No. 942 3263.

The Federal Trade Commission, having initiated an investigation of certain acts and practices of WLAR Co., a corporation, and Michael K. Craig, individually and as an officer of said corporation, hereinafter sometimes referred to as proposed respondents, and it now appears that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It Is Hereby agreed by and between WLAR Co., by its authorized officer, and Michael K. Craig, individually and as an officer of said corporation, and their attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent WLAR Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 5622 Columbia Pike #106, in the City of Falls Church, State of Virginia, 22041.

Proposed respondent Michael K. Craig is or was at relevant times herein the sole owner, officer, and employee of said corporation. Individually or in concert with others, he participated in and/or formulated, directed, and controlled the acts and practices of said corporation and his address is the same as that of said corporation.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondents waive:

- (a) Any further procedural steps;
- (b) The requirement that the

Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered into pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period

of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of complaint.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents, addressed to Arnold & Porter, 1200 New Hampshire Avenue, N.W., Washington, D.C. 20036-6885, shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

**Order**

For purposes of this Order:

1. "Clearly and prominently" shall mean as follows:

(a) In a television or videotape advertisement, the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement. The audio disclosure shall be delivered in a volume and cadence and for a duration sufficient for an ordinary consumer to hear and comprehend it. The video disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it.

(b) In a print advertisement, the disclosure shall be in close proximity to the representation that triggers the disclosure and given in at least twelve (12) point type.

(c) In a radio advertisement, the disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it.

2. "Competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

3. "Weight-loss product" shall mean any product or program designed or used to prevent weight gain or to produce weight loss, reduction or elimination of fat, slimming, or caloric deficit in a user of the product or program.

#### I

It is ordered that respondents, WLAR Co., a corporation, its successors and assigns, and its officers; and Michael K. Craig, individually and as an officer of WLAR Co.; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of Swedish 19, Swedish System, BM Program, New Shape, Body Maker, or any substantially similar product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that:

A. Such product is new or is a new weight-loss discovery; or

B. Such product does not require dieting.

#### II

It is further ordered that respondents, WLAR Co., a corporation, its successors and assigns, and its officers; and Michael K. Craig, individually and as an officer of WLAR Co.; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of any weight-loss product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that:

A. Such product causes fast or easy weight loss;

B. Such product is more effective than other products or programs in controlling appetite or causing weight loss;

C. Purchasers of such products are successful in controlling appetite, losing weight, or reducing body fat;

D. Such product causes users to develop a new set of eating habits, thereby reducing caloric intake and causing significant and long-term or permanent weight loss; or

E. Such product has any effect on users' weight, body size or shape, body measurements, or appetite, unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

#### III

It is further ordered that respondents, WLAR Co., a corporation, its successors and assigns, and its officers; and Michael K. Craig, individually and as an officer of WLAR Co.; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of any weight-loss product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that such product has been used successfully by any number of persons unless, at the time of making such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific

evidence, that substantiates the representation.

#### IV

Nothing in Parts I through III of this Order shall prohibit respondents from making representations which promote the sale of books and other publications, *provided that*, the advertising only purports to express the opinion of the author or to quote the contents of the publication; the advertising discloses the source of the statements quoted or derived from the contents of the publication; and the advertising discloses the author to be the source of the opinions expressed about the publication. This Part shall not apply, however, if the publication or its advertising is used to promote the sale of some other product as part of a commercial scheme.

#### V

It is further ordered that respondents, WLAR Co., a corporation, its successors and assigns, and its officers; and Michael K. Craig, individually and as an officer of WLAR Co.; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of Swedish 19, Swedish System, BM Program, New Shape, Body Maker, or any substantially similar product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, in any manner, directly or by implication, that any such product has any effect on weight or body size, unless respondents disclose, clearly and prominently, and in close proximity to such representation, that such product consists solely of a booklet or pamphlet containing information and advice on weight loss.

#### VI

It is further ordered that respondents, WLAR Co., a corporation, its successors and assigns, and its officers; and Michael K. Craig, individually and as an officer of WLAR Co.; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of any weight-loss product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any

representation, in any manner, directly or by implication, that any such weight-loss product has any effect on weight or body size, unless they disclose, clearly and prominently, and in close proximity to such representation, that diet and/or increasing exercise is required to lose weight; *provided however*, that this disclosure shall not be required if respondents possess and rely upon competent and reliable scientific evidence demonstrating that the weight-loss product is effective without either dieting or increasing exercise.

## VII

It is further ordered that respondent, WLAR Co., shall:

A. Within thirty (30) days after service of this Order, provide a copy of this Order to each of respondent's current principals, officers, directors, and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this Order; and

B. For a period of five (5) days from the date of issuance of this Order, provide a copy of this Order to each of respondent's future principals, officers, directors, and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this Order who are associated with respondent or any subsidiary, successor, or assign, within three (3) days after the person assumes his or her responsibilities.

## VIII

It is further ordered that for five (5) years after the last date of dissemination of any representation covered by this Order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission or its staff for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

## IX

It is further ordered that respondent, WLAR Co., shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in its corporate structure, including but not limited to dissolution, assignment, or sale resulting in the emergence of a

successor corporation, the creation or dissolution of subsidiaries or affiliates, the planned filing of a bankruptcy petition, or any other corporate change that may affect compliance obligations arising out of this Order.

## X

It is further ordered that respondent, Michael K. Craig, shall, for a period of three (3) years from the date of issuance of this Order, notify the Commission within thirty (30) days of the discontinuance of his present business or employment and of his affiliation with any new business or employment involving the advertising, offering for sale, sale, or distribution of any weight-loss product. Each notice of affiliation shall include respondent's new business address and telephone number, current home address, and a statement describing the nature of the business or employment and his duties and responsibilities.

## XI

It is further ordered that respondents shall, within sixty (60) days after service of this Order, and at such other times as the Federal Trade Commission may require, file with the Commission's report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

### Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from proposed respondents WLAR Co. and Michael K. Craig.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns advertising for five weight-loss products, marketed under the names "Swedish 19," "Body Maker," "BM Program," "New Shape," and "Swedish System" (collectively referred to herein as "the Swedish 19 products"). These products are booklets or pamphlets containing advice on dieting and exercise.

The Commission's Complaint charges that proposed respondents WLAR Co. and Michael K. Craig falsely represented that users of the Swedish 19 products

are not required to consciously diet to lose weight and that BM Program, New Shape, and Body Maker are new weight-loss discoveries. The Complaint also alleges that the proposed respondents falsely represented that they possessed a reasonable basis when they made the following claims: (1) the Swedish 19 products cause fast and easy weight loss; (2) the Swedish 19 products are more effective than other products or programs in controlling appetite and causing weight loss; (3) purchasers of the Swedish 19 products are successful in controlling appetite, losing weight, and reducing body fat; (4) Swedish 19, Swedish System, BM Program, and Body Maker cause users to develop a new set of eating habits, thereby reducing caloric intake and causing significant and long-term or permanent weight loss; and (5) thousands of girls have successfully lost weight by using Swedish 19, Swedish System, New Shape, and Body Maker. Finally, the Complaint alleges that respondents' failure to disclose in advertisements that the Swedish 19 products consist only of booklets or pamphlets containing advice concerning techniques for reducing caloric intake and/or exercise, and that reducing caloric intake and/or increasing exercise is required to lose weight was a deceptive practice.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent proposed respondents from engaging in similar acts in the future.

Part I of the proposed order prohibits proposed respondents from representing that the Swedish 19 products, or substantially similar products, are new or are a new weight-loss discovery, or that such products do not require dieting. Part II requires proposed respondents to possess competent and reliable scientific evidence before making representations that any weight-loss product causes fast or easy weight loss; is more effective than other products or programs in controlling appetite or causing weight loss; causes users to develop a new set of eating habits, thereby reducing caloric intake and causing significant and long-term or permanent weight loss; or has any effect on users' weight, body size or shape, body measurements, or appetite; or that purchasers of such products are successful in controlling appetite, losing weight, or reducing body fat. Part III requires proposed respondents to have substantiation for any representation that any weight-loss product has been used successfully by any number of persons.

Part IV of the proposed order provides that nothing in Parts I through III

prohibits proposed respondents from making representations which promote the sale of books and other publications, provided that, the advertising only purports to express the opinion of the author or to quote the contents of the publication; the advertising discloses the source of the statements quoted or derived from the contents of the publication; and the advertising discloses the author to be the source of the opinions expressed about the publication. The proposed order further provides that Part IV does not apply to any publication or its advertising that is used to promote the sale of some other product as part of a commercial scheme.

Part V prohibits proposed respondents from representing that the Swedish 19 products, or any substantially similar product, has any effect on weight or body size, unless respondents disclose prominently that the product consists solely of a booklet or pamphlet containing information and advice on weight loss. Part VI requires proposed respondents to disclose that diet or exercise are required to lose weight in connection with any representation about the effect of a weight-loss product on weight or body size, unless they have competent and reliable scientific evidence to the contrary.

Part VII requires WLAR Co. to distribute a copy of the order to certain current and future company personnel. Part VIII requires proposed respondents to maintain, for five (5) years, all materials that support, contradict, qualify, or call into question any representations they make that are covered by the proposed order. Under Part IX of the proposed order, WLAR Co. is required to notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in its corporate structure that may affect compliance with the order's obligations. Part X requires that Michael K. Craig, for a period of three (3) years, notify the Commission of any change in his business or employment or of his affiliation with any new business or employment involving the advertising, offering for sale, sale, or distribution of any weight-loss product. Part XI obligates proposed respondents to file compliance reports with the Commission.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of

the agreement and proposed order or to modify in any way their terms.

**Benjamin I. Berman,**

*Acting Secretary.*

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## OFFICE OF GOVERNMENT ETHICS

### Submission of Updated Model Qualified Trust Documents for OMB Approval Under the Paperwork Reduction Act

**AGENCY:** Office of Government Ethics (OGE).

**ACTION:** Notice.

**SUMMARY:** The Office of Government Ethics has submitted updated qualified trust documents for extension of Office of Management and Budget (OMB) approval under the Paperwork Reduction Act. A model qualified blind trust (for multiple fiduciaries) and two model confidentiality agreements have also been submitted for review and approval for the first time.

**DATES:** Comments on this proposal should be received by July 21, 1995.

**ADDRESSES:** Comments should be sent to Joseph F. Lackey, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; telephone: 202-395-7316.

**FOR FURTHER INFORMATION CONTACT:** Judith A. Kim or William E. Gressman, Office of Government Ethics, Suite 500, 1201 New York Avenue NW., Washington, DC 20005-3917; telephone 202-523-5757, FAX 202-523-6325. A copy of OGE's request for extension and approval from OMB, including the certificates and model documents, may be obtained by contacting Ms. Kim or Mr. Gressman.

**SUPPLEMENTARY INFORMATION:** There are two categories of information collection requirements being submitted, each with its own related reporting certificates or model documents which are subject to review and approval by OMB under the Paperwork Reduction Act (44 U.S.C. chapter 35). The OGE regulatory citations for these two categories, together with identification of the forms used for their implementation, are as follows:

i. Qualified trust administration—5 CFR 2634.401(d)(2), 2634.403(b)(11), 2634.404(c)(11), 2634.406(a)(3) & (b), 2634.408, 2634.409 and appendixes A & B of part 2634 (the two implementing forms, the Certificate of Independence and Certificate of Compliance, are

codified respectively in the cited appendixes; see also the Privacy Act and Paperwork Reduction Act notices thereto in appendix C); and

ii. Qualified trust drafting—5 CFR 2634.401(c)(1)(i) & (d)(2), 2634.403(b), 2634.404(c), 2634.408 and 2634.409 (the nine implementing forms are the (A) Model Qualified Blind Trust Provisions, (B) Model Qualified Diversified Trust Provisions, (C) Model Qualified Blind Trust Provisions (For Use in the Case of Multiple Fiduciaries), (D) Model Qualified Blind Trust Provisions (For Use in the Case of an Irrevocable Pre-Existing Trust), (E) Model Qualified Diversified Trust Provisions (Hybrid Version), (F) Model Qualified Diversified Trust Provisions (For Use in the Case of Multiple Fiduciaries), (G) Model Qualified Diversified Trust Provisions (For Use in the Case of an Irrevocable Pre-Existing Trust), (H) Model Confidentiality Agreement Provisions (For Use in the Case of a Privately Owned Business), and (I) Model Confidentiality Agreement Provisions (For Use in the Case of Investment Management Activities).

The Office of Government Ethics is seeking three-year OMB paperwork approval of the Model Qualified Blind Trust Provisions (For Use in the Case of Multiple Fiduciaries) and the two model confidentiality agreements listed in items #s ii.C., H. & I. above, and a three-year extension of OMB approval on the remaining six model trust drafts, also listed in item # ii, as well as the two certificates listed in item # i. The model confidentiality agreements are used for drafting documents prohibiting communications between the employee/settlor of the qualified trust and other persons not parties to the qualified trust but who are or may be privy to information which indicates the activities occurring in the trust portfolio during the term of the qualified trust. These agreements are publicly available upon request.

The total annual public reporting burden represents the time for trust certificates and model documents processed by OGE. The burden is based on the amount of time imposed on private citizens.

Virtually all filers/document users are private trust administrators and other private representatives helping to set up and maintain the qualified blind and diversified trusts. The detailed paperwork estimates below for the various trust certificates and model documents are based primarily on OGE's experience with administration of the qualified trust program.

i. Trust Certificates: